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1	IN THE CIRCUIT COURT OF THE STATE OF OREGON	2	
2	FOR THE COUNTY OF MALHEUR		
3		3 <u>Examinations</u>	<u>Page</u>
4	NICHOLAS McGUFFIN,)	4	
5	Plaintiff,	5 EXAMINATION BY MS. PURACAL	6
6	vs. No. 15CV1030	6 EXAMINATION BY MR. REIM	63
7	MARK NOOTH, Superintendent,	7	
8	SRCI,) Defendant.)	8 <u>Exhibits</u>	
9)	9 <u>No. Description</u>	<u>Page</u>
10		10 1 Sermeno Subpoena	5
11		11 2 Kaplan Subpoena	5
12		12 3 Moore Subpoena	5
13		13 4 6/6/17 Report	5
14 15		'	
16	DEPOSITION OF STEPHENIE WINTER SERMENO		
17	Taken in behalf of the Plaintiff	15 6 8/9/18 Cybergenics Report	5
18	June 24, 2019	16 7 8/27/00 Report	5
19		17 8 1/21/02 Report	5
20		18 9 STR Analysis for Casework	5
21		19 10 Notes/Sample Extraction Re	eport 5
22		20 11 Genotype Summary of Resu	ults 5
23		21 12 Transcript Excerpt	5
24		22 13 5/17/17 Amended Report	5
25		23 14 10/10/17 Analytical Report	5
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		25 16 7/17/00 Supplemental Repo	
	2	2 2 2 3 3 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4	4
1 2	BE IT REMEMBERED THAT, pursuant to Oregon Rules of Civil Procedure, the deposition of STEPHENIE	1 17 Undated Letter	5
3	WINTER SERMENO was taken before Lisa J. Pace, Court	2 18 Email String	5
4 5	Reporter and Notary Public for Oregon, on Monday, June 24, 2019, commencing at the hour of 8:58, the	3 19 Timeline of Events	
6	proceedings being reported in the offices of OSP		5
7	Forensics, Clackamas, Oregon.	4 20 9/8/17 Allele Calls	5
8 9	-: - APPEARANCES:	5	
10	APPEARING FOR THE PLAINTIFF(S)	6 <u>Information to Produce</u>	
11	Janis C. Puracal Forensic Justice Project	7 Page Line	
12	333 SW Taylor Street, Suite 403	8 Emails 12 17	
13	Tigard OR 97204 503-664-3641	9 von Beroldingen 15 17	
	jpuracal@forensicjusticeproject.org	10 contact info	
14	and	11 Incident Reports 59 25	
15	Brittney Plesser Oregon Innocence Project	12	
40	PO Box 5248	13 Instruction by Counsel	
16	Portland OR 97208 503-944-2270	14 Page Line	
17	bplesser@oregoninnocence.info	15	
18		16	
	APPEARING FOR THE DEFENDANT(S)	17	
19	Paul E. Reim	18	
20	DOJ Trial Corrections Lit		
24	1162 Court Street NE	19	
21	Salem OR 97301 503-947-4700	20	
22	paul.reim@doj.state.or.us	21	
23		22	
		23	
24	Also Present: John Comery	24	
25		25	

07/11/2019 07:20:18 PM Exhibit 79, Page 1 of 6

	5		7
1	PROCEEDINGS	1	supervisor?
2	[Sermeno Subpoena, EXB. 1, marked]	2	A. Prior to working for Oregon State Police I
3	[Kaplan Subpoena, EXB. 2, marked]	3	was employed by Washington State Patrol, I worked for
4	[Moore Subpoena, EXB. 3, marked]	4	them for ten years, both at the Seattle laboratory
5	[6/6/17 Report, EXB. 4, marked]	5	and the Vancouver laboratory. Prior to that I worked
6	[5/20/19 Supplemental Report, EXB. 5, marked]	6	in the State of California at Oakland Police
7	[8/9/18 Cybergenics Report, EXB. 6, marked]	7	Department, LA County Coroner, LA County Sheriff and
8	[8/27/00 Report, EXB. 7, marked]	8	at a private DNA laboratory called Forensic
9	[1/21/02 Report, EXB. 8, marked]	9	Analytical.
10	[STR Analysis for Casework, EXB. 9, marked]	10	Q. Have you always been a DNA supervisor?
11	[Notes/Sample Extraction Report, EXB. 10, marked]	11	A. No.
12	[Genotype Summary of Results, EXB. 11, marked]	12	Q. What were you when you were at the
13	[Transcript Excerpt, EXB. 12, marked]	13	Washington State lab?
14	[5/17/17 Amended Report, EXB. 13, marked]	14	A. For a period of time I was an analyst and
15	[10/10/17 Analytical Report, EXB. 14, marked]	15	for a period of time I was a supervisor.
16	[3/5/18 Analytical Report, EXB. 15, marked]	16	Q. Always in DNA?
17	[7/17/00 Supplemental Report, EXB. 16, marked]	17	A. Yes.
18	[Undated Letter, EXB. 17, marked]	18	Q. If you could look in the binder right in
19	[Email String, EXB. 18, marked]	19	front of you, Exhibit No. 1 is the subpoena that I
20	[Timeline of Events, EXB. 19, marked]	20	sent to you to appear for this deposition. Is that
21	[9/8/17 Allele Calls, EXB. 20, marked]	21	correct?
22		22	A. Yes.
23	STEPHENIE WINTER SERMENO,	23	Q. And you are appearing pursuant to that
24	having first been sworn or affirmed, was examined and	24	deposition subpoena, correct?
25	testified under penalties of perjury as follows:	25	A. I am, yes.
	STUMPTOWN STENO		STUMPTOWN STENO
	503.888.1416		503.888.1416
	0		
	6		8
1	MS. PURACAL: Janice Puracal from the	1	Q. All right. Have you ever testified at
2	MS. PURACAL: Janice Puracal from the Forensic Justice Project for Petitioner McGuffin,	2	Q. All right. Have you ever testified at deposition before?
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2 Q. Wast's the more to II? 2 A. You would look at peak helights, you would look at the number of alteles at each tocation, you would look for other artifacts besides stutter. 3 Q. And youre triping to determine want's a few and left worsus what's irrelevant information? 4 A. Correct. 9 A. Correct. 10 Q. From there the analyst would write down the real alteles worsus what's irrelevant information? 7 A. Correct. 11 C. That's the interpretation phase? 9 A. Correct. 12 A. Correct. 13 Q. And then they're going to compare those real alteles on their altele chart? 14 C. And then they're going to compare those real interior conclusions in a typewritten report? 15 C. And from there they're going to then report to their creports in their conductions in a typewritten report? 16 A. Yes. 17 Q. And from there they're going to then report to the conclusions in a typewritten report? 18 A. Yes. 20 Q. Is that the reporting phase? 21 A. Correct. 22 Q. So you understand in Mr. McCuffin's case STUMPTOWN STENO SOURBEATHS in front of you, that's the August 2000 right? 23 A. Correct. 24 Q. And we know now that there was foreign DNA wasn't in the report Issued in 2000. 2 Is cann't - I honestly can't thenews foreign DNA on obting those whose but that foreign DNA wasn't in the report issued in 2000. 3 Is can't - I honestly can't thenews foreign DNA on obting the body threshold that did not end up in the report. 4 Q. And we know now that there was foreign DNA wasn't in the free front of you, that's the August 2000 report? 3 A. Correct. 4 Q. And we know now that there was foreign DNA wasn't in the free from the flash on both of those whose but that foreign DNA wasn't in the free front of you, that's the August 2000 report? 4 Q. So we dent ideapped on that. Correct, that there was foreign DNA on a least one of the samples from 2000 report? 5 Q. So it's your understanding that there was foreign DNA on a least one of the samples from 2000 report? 5 Q. So it's your understanding that there was foreign DNA on a least one of the samples from 20				
2 A. You would look at peak heights, you would look at peak heights, you would look for other artifacts besides stutter. 2 A. And you're trying to determine what's a feral allaties versus what is irrelevant information?? 3 A. Correct. 4 A. I have not. 5 Q. And then they're going to compare those to controlled by the real allaties on their allatie chart? 2 A. Correct. 3 Q. And then they're going to compare those to look some some the exclusions and the inconclusives? 4 A. I was not to standards to figure out the the conclusives? 5 Q. And from there they're going to tempere those to be conclusived in the protection of the p		29		31
3 look at the number of alleles at each location, you would book for other artifacts besides stutter. 5 Q. And you're trying to determine what's a color allele versus what's irrelevant information? 7 A. Correct. 8 Q. That's the interpretation phase? 9 A. Correct. 10 Q. From there the analyst would write down the real allele chart? 11 Q. And then they're going to compare those look and the exclusions and the inconclusives? 12 A. Ves. 13 quantity of the the standard to the limited and the inconclusives? 14 (a. I shart the financial standard to the conclusives?) 15 quantity of the standard to the conclusives? 16 have real alleles to standards to figure out the limit conclusions in a typewritten report? 17 quantity of the standard to the conclusives? 18 quantity of the standard to the conclusives? 19 quantity of the standard to the conclusives? 20 quantity of the standard to the conclusions of the conclusions in a typewritten report? 21 quantity of the standard to the conclusives? 22 quantity of the standard to the conclusions of the conclusions in a typewritten report? 23 process? 24 quantity of the standard to the conclusions of the conclusions in a typewritten report to the standard to the conclusions in a typewritten report to the standard to the conclusions of the	1	Q. What's the more to it?	1	
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5 Q. And you're trying to determine what's a foreign allele versus what's irrelevant information? 7 A. Correct. 8 Q. Inlat's the interpretation phase? 9 A. Correct. 10 Q. From there the analyst would write down the real alleles on their allele chart? 11 Q. And then they're going to compare those real alleles to standards to figure out the since clusters and the exclusions and the exclusions and the inconclusives? 17 Q. And from there they're going to compare those real alleles to standards to figure out the since clusions and the exclusions and the inconclusives? 18 A. Yes. 19 A. Yes. 20 Q. Is that the reporting phase? 21 A. Yes. 22 Q. Have I missed any part of the basic 22 Q. So you understand in Mr. McGuffin's case process? 23 process? 24 A. I don't think so. 25 Q. So you understand in Mr. McGuffin's case STUMPTOWN STENO 503.888.146 2	3	look at the number of alleles at each location, you	3	the analyst who ran that sample in 2000?
6 real allele versus what's irrelevant information? 7	4	would look for other artifacts besides stutter.	4	A. I have not.
7 A. I don't. 8 Q. That's the interpretation phase? 9 A. Correct. 10 Q. From there the analyst would write down the 1 real alleles on their allele chart? 11 A. Correct. 12 A. Correct. 13 Q. And then they're going to compare those inclusions and the hexiusions and the inconclusives? 14 real alleles to standards to figure out the inconclusives? 16 A. Yes. 17 Q. And from there they're going to then report to the inclusions in a typewritten report? 18 D. A. Yes. 19 A. Yes. 20 Q. Is that the reporting phase? 21 A. Yes. 22 Q. Leave I missed any part of the basic process? 23 process? 24 A. I don't think so. 25 Q. So you understand in Mr. McGuffin's case STUMPTOWN STENO 503.88.1416 26 To back before the criminal trial, the victim, Leah in the reports one that there was foreign DNA was not reported. 24 Q. And we know now that there was foreign DNA was not reported. 25 Q. Was it in one of those supdance documents? 26 A. I don't think so. 27 So you understand in Mr. McGuffin's case STUMPTOWN STENO 503.88.1416 28 To time and did not see that in the protocol. 29 Q. Was it in one of those guidance documents? 30 A. I don't know that guidance documents? 31 A. I don't know that guidance documents? 32 A. I don't know that guidance documents? 33 A. I don't know that guidance documents? 34 A. Yes. 35 Q. Okay. If you flip to Exhibit 7 in that to one other standard, correct? 36 Q. Okay. If you flip to Exhibit 7 in that to one other standard, correct? 38 A. I don't know where that discretion to the foreign DNA was below the submodulation of these submodulation and protocol from that period structures the protocol from that period special that point in time. That in time, That in time. That in time the trial in time. That in time. T	5	Q. And you're trying to determine what's a	5	Q. Do you have any personal knowledge about
8 Q. What is your understanding of why the 9 foreign DNA was not reported in the 2000 or 2002	6	real allele versus what's irrelevant information?	6	what happened with the testing in 2000?
9 foreign DNA was not reported in the 2000 or 2002 10 Q. From there the analyst would write down the 11 real alleles on their allele chart? 11 A. Correct. 12 A. Correct. 13 Q. And then they're going to compare those 14 real alleles to standards to figure out the 15 inclusions and the inconclusions and the preparation to either 15 inclusions and the return of the properties of it, where that comes from? 17 Q. And from there they're going to then report 18 their conclusions in a typewritten report? 18 A. Yes. 20 Q. Is that the reporting phase? 21 A. Yes. 22 Q. Have I missed any part of the basic 23 process? 23 process? 24 A. I don't think so. 25 Q. So you understand in Mr. McCuffin's case STUMPTOWN STENO 503.888.1416 30 Toreign DNA was the sweet ested for DNA in 2000, right? 31 back before the criminal trial, the victim, teah 2 Freeman's shoes were tested for DNA in 2000, right? 32 To both of those shoos but that foreign DNA was thin 6 the report issued in 2000. 33 A. Correct. 34 Q. And we know now that there was foreign DNA on both of those shoos but that foreign DNA wasn't in 6 the report issued in 2000. 34 Correct. 35 Q. Correct. 36 Q. Correct. 37 Correct. 38 Q. Correct. 39 Process? 30 A. I's was in both shoos or just one. I know one had 3 alleles below threshold that did not end up in the report. 30 Q. Correct, the DNA wasn't in 6 the report standard, correct? 31 Q. Correct, the DNA was below the laboratory 5 to one other standard, correct? 31 Q. Was it in one of those applies that was an obtained that it was not reported. 34 Q. And we know now that there was foreign DNA on of least one of the samples from 2000 to one other standard, correct? 39 Q. Correct, the DNA was below the laboratory 5 to one other standard, correct? 30 Q. So it's your understanding that there was 19 practice. I just cou	7	A. Correct.	7	A. I don't.
10 Q. From there the analyst would write down the real sileces on their alleic chart? 12 A. Correct. 13 Q. And then they're going to compare those the real sileces to standards to figure out the first real sileces to standards to figure out the first real sileces to standards to figure out the first real sileces to standards to figure out the first real sileces to standards to figure out the first report DNA below the threshold or not report the DNA below the scale or place of it, where that comes from. I spoke with Cacilla specifically in regard to it and asked believe of the three or not negative to it and asked or the cacilla specifically in report does not not negative that the or that policy cache and the process? 10 A. I don't think so. 11 back before the criminal trial, the victin. Leah or both of those shoos but that foreign DNA on both of those shoos but that foreign DNA on both of those shoos but that foreign DNA on both of those shoos but that foreign DNA on both of this season but the discretion of the three or not or years the process of the three or not or report those alleles below threshold and it was not reported. 10 A. Corec	8	Q. That's the interpretation phase?	8	Q. What is your understanding of why the
11 real alleles on their allele chart? 12	9	A. Correct.	9	foreign DNA was not reported in the 2000 or 2002
12 A. Correct. 13 Q. And then they're going to compare those 14 real alleles to standards to figure out the 15 inclusions and the exclusions and the inconclusives? 16 A. Yes. 17 Q. And from there they're going to then report 18 their conclusions in a typewritten report? 19 A. Yes. 20 Q. Is that the reporting phase? 21 A. Yes. 22 Q. Have I missed any part of the basic 23 process? 24 A. I don't think so. 25 Q. So you understand in Mr. McGuffin's case 26 Tuber Town STIMPTOWN STENO 27 SO 388.1416 28 Q. So you understand in Mr. McGuffin's case 29 Tuber Town Standard from the rewast foreign DNA 30 To time and did not see that in the protocol. 31 report. 32 A. Correct. 33 A. Correct. 44 Q. And we know now that there was foreign DNA 45 on both of those shoes but that foreign DNA wasn't in 46 the report lissued in 2000. 47 A. I can't I honestly can't remember if it 48 was in both shoes or just one. I know one had 49 alleles below threshold that did not end up in the 40 proport. 41 Q. Okay. If you flip to Exhibit 7 in that 41 Danary 2002 report, comparing the samples from 2000 47 A. I can't I honestly can't remember if it 48 was in both shoes or just one. I know one had 49 alleles below threshold that did not ned up in the 40 proport. 41 Q. Okay. If you flip to Exhibit 7 in that 41 Q. Okay. If you flip to Exhibit 8, that's the 41 Q. Okay and if you flip to Exhibit 8, that's the 42 Q. So it's your understanding that there was 42 foreign DNA on at least one of the samples from 2000 43 report. 44 Q. So it's your understanding that there was 45 foreign DNA on at least one of the samples that was 46 foreign DNA on as least one of the samples that was 47 foreign DNA on as least one of the samples that was 48 foreign DNA on as least one of the samples that was 49 Q. So we don't disagree on that, correct, that 40 Q. So we don't disagree on that, was not report the samples that was not reported. 41 Q. Ok so we don't disagree on that, correct, that 42 Q. So we don't disagree on that, was not report the samples that was not r	10	Q. From there the analyst would write down the	10	reports?
13	11	real alleles on their allele chart?	11	A. It's my understanding that at the time the
real alleles to standards to figure out the finitulations and the exclusions and the inconclusives? finitulations and the exclusions in a typewritten report? finitulation and the exclusions and the inconclusives? finitulation and the exclusion and the exclusion asked if this in fact did happen and this was allowed, and she confirmed that. Where that curie or that policy are finitulated that. Where that curie asked if this in fact did happen and this was allowed, and she confirmed that. Where that curie or that policy of this in fact did happen and this was allowed, and she confirmed that. Where that curie or that policy of this in fact did happen and this was allowed, and she confirmed that. Where that curie or that policy of the confirmed that. Where that curie or that policy of the confirmed that. Where that curie or that policy of the confirmed that. Where that curie or that policy of the confirmed that. Where that curie or that policy of the confirmed that. Where that curie or that policy of the confirmed that. Where that curie or that policy of the world that. Where that curie or that policy of the confirmed that. Where that curie or that policy that the was in a curie or that policy of the same that the protocol from the lab? 1	12	A. Correct.	12	protocols allowed an analyst discretion to either
15 inclusions and the exclusions and the inconclusives? 17 Q. And from there they're going to then report 18 their conclusions in a typewritten report? 19 A. Yes. 20 Q. Is that the reporting phase? 21 A. Yes. 22 Q. Have I missed any part of the basic 23 process? 24 A. I don't know where it comes from? 25 Q. So you understand in Mr. McCuffin's case 26 STUMPTOWN STENO 503.888.1416 27 Process? 28 A. Correct. 29 Freeman's shoes were tested for DNA in 2000, right? 30 A. Correct. 4 Q. And we know now that there was foreign DNA on both of those shoes but that foreign DNA wash tin deference. 4 Q. And we know now that there was foreign DNA in the samples from 2001 report. 4 Q. Okay. If you flip to Exhibit 8, that's the January 2002 report, comparing the samples from 2001 rore in the January 2002 report, comparing the samples from 2001 foreign DNA on a tleast one of the samples from 2002 rorigin by A. Yes. 20 Q. So you understanding that there was foreign DNA on a tleast one of the samples from 2001 foreign DNA on a tleast one of the samples from 2002 foreign DNA on a tleast one of the samples from 2002 foreign DNA on a tleast one of the samples from 2002 foreign DNA on a tleast one of the samples from 2003 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the samples from 2004 foreign DNA on a tleast one of the	13	Q. And then they're going to compare those	13	report DNA below the threshold or not report the DNA
16 A. Yes. 17 Q. And from there they're going to then report 18 their conclusions in a typewritten report? 19 A. Yes. 20 Q. Is that the reporting phase? 21 A. Yes. 22 Q. Have I missed any part of the basic 23 process? 24 A. I don't think so. 25 Q. So you understand in Mr. McGuffin's case 25 STUMPTOWN STENO 26 So you understand in Mr. McGuffin's case 27 Freeman's shoes were tested for DNA in 2000, right? 28 A. Correct. 29 Q. And we know now that there was foreign DNA alleles below threshold that did not end up in the report. 29 Q. Okay, If you flip to Exhibit 7 in that in front of you, that's the August 2000 report. 20 Q. Now you don't know where it comes from. I spoke the confirmed that. Where that robe shees below threshold? 30 the confirmed that. Where that rule or that policy came from I don't know. 31 protecs? 32 process? 33 process? 34 A. I don't think so. 35 TILMPTOWN STENO 36 Say88.1416 37 the lab? 38 A. I don't those win the written protocol from that period STUMPTOWN STENO 503.888.1416 31 back before the criminal trial, the victim. Leah 4 C. And we know now that there was foreign DNA on alleles below threshold that did not end up in the report. 4 A. Yes. 4 C. Corect. 5 Q. Okay, If you flip to Exhibit 7 in that in front of you, that's the August 2000 report. 4 A. Yes. 4 A. Yes. 5 Q. And if you flip to Exhibit 8, that's the Q. So was this considered a best practice at the time? 4 A. Yes. 4 A. Yes. 5 Q. So was this considered a best practice at the time? 5 therefore the criminal trial, the victim. Leah 5 process. 6 Q. So was this considered a best practice at the time? 7 the time? 8 A. I don't know where that discretion to decide whether or not to report those alleles below threshold? 8 A. I don't know that I could say it was best practice. I just could say that it's my understanding that it was possible and it was analyst discretion to decide whether or not to report these alleles below threshold? 9 Q. So it's your understanding that there was to one other standard, correct? 19 Q. So it's your understand	14	real alleles to standards to figure out the	14	below threshold.
17 Q. And from there they're going to then report! 18 their conclusions in a typewritten report? 29 A. Yes. 20 Q. Is that the reporting phase? 21 A. Yes. 22 Q. Have I missed any part of the basic 23 process? 24 A. I don't think so. 25 Q. So you understand in Mr. McGuffin's case 26 STUMPTOWN STENO 27 SO	15	inclusions and the exclusions and the inconclusives?	15	Q. Can you tell me more about the discretion
18 their conclusions in a typewritten report? 19 A. Yes. 20 Q. Is that the reporting phase? 21 A. Yes. 22 Q. Have I missed any part of the basic 23 process? 24 A. I don't think so. 25 Q. So you understand in Mr. McGuffin's case 26 STUMPTOWN STENO 27 So you understand in Mr. McGuffin's case 28 STUMPTOWN STENO 29 So you understand in Mr. McGuffin's case 29 STUMPTOWN STENO 20 So you understand in Mr. McGuffin's case 29 STUMPTOWN STENO 20 So you understand in Mr. McGuffin's case 20 STUMPTOWN STENO 21 To back before the criminal trial, the victim, Leah 21 Freeman's shoes were tested for DNA in 2000, right? 22 Q. Was it in one of those guidance documents? 23 A. I don't know that guidance documents? 24 A. I don't know that guidance documents? 25 Q. And we know now that there was foreign DNA wasn't in the report lissued in 2000. 26 To A. I can't - I honestly can't remember if it was in the written protocol. 27 A. I don't know that guidance documents? 38 A. I don't know that guidance documents? 4 existed at that point in time. That might be a newer thing. 5 on both of those shoes but that did not end up in the report. 4 Q. Okay. If you flip to Exhibit 7 in that bliese below threshold that did not end up in the protocol from that period of the samples from 2000 report. 4 Q. Okay. If you flip to Exhibit 7 in that bliese below threshold and it was native the foreign DNA on at least one of the samples from 2000 region. 5 Q. And if you flip to Exhibit 8, that's the grace on that, correct, that the foreign DNA on at least one of the samples from 2000 and listed in the August 2000 report? 21 A. I don't. 22 Q. But you don't know where that discretion to decide whether or not to report those alleles below threshold? 23 A. I don't. 4 A. Yes. 4 Q. So we don't disagree on that, correct, that there was foreign DNA on at least one of the samples from 2000 and listed in the August 2000 report? 23 A. I don't. 4 A. Yes. 4 Q. So we don't know that guidance documents? 5 there was foreign DNA on at least one of the samples from 2000 and li	16	A. Yes.	16	piece of it, where that comes from?
A. Yes. Q. Is that the reporting phase? A. Yes. Q. Have I missed any part of the basic process? A. I don't think so. Q. So you understand in Mr. McGuffin's case STUMPTOWN STENO 503.886.1416 Q. So you understand in Mr. bucuffin's case STUMPTOWN STENO 503.886.1416 Q. And we know now that there was foreign DNA wasn't in the report issued in 2000. A. I don't bnose shoes but that foreign DNA wasn't in the report issued in 2000. A. I don't hose shoes but that foreign DNA wasn't in the report issued in 2000. A. I don't hose shoes but that foreign DNA wasn't in the report issued in 2000. A. Carrect. Q. So you understand in the written protocol. I reviewed the protocol from that period STUMPTOWN STENO 503.888.1416 3 alleles below threshold that did not end up in the report issued in 2000. The profit issued in 2000. Q. Was it in one of those guidance documents? A. I don't know that guidance documents? A. I don't know that guidance documents? The time? A. I don't know that guidance documents? A. I don't know that guidance documents? The time? A. I don't know that guidance documents? The time? A. I don't know that guidance documents? A. I don't know that guidance documents? The time? A. I don't know that guidance documents? A. I don't know that guidance docu	17	Q. And from there they're going to then report	17	A. I don't know where it comes from. I spoke
20	18	their conclusions in a typewritten report?	18	with Cecilia specifically in regard to it and asked
21 A. Yes. 22 Q. Have I missed any part of the basic 23 process? 24 A. I don't think so. 25 Q. So you understand in Mr. McGuffin's case 26 STUMPTOWN STENO 503.888.1416 30 30 31 back before the criminal trial, the victim, Leah 32 A. Correct. 4 Q. And we know now that there was foreign DNA wasn't in 6 the report issued in 2000. 4 A. I don't know that guidance documents? 5 on both of those shoes but that foreign DNA wasn't in 6 the report issued in 2000. 4 A. I don't know that guidance documents? 5 vanibut shoes or just one. I know one had alleles below threshold that did not end up in the 10 report. 10 report. 11 Q. Okay. If you flip to Exhibit 7 in that binder in front of you, that's the August 2000 13 report. 14 A. Yes. 15 Q. And if you flip to Exhibit 8, that's the 16 January 2002 report, comparing the samples from 2000 foreign DNA on at least one of the samples that was 19 not listed in the August 2000 report? 28 A. Correct, the DNA was below the laboratory's there was foreign DNA on at least one of the samples? 29 There was foreign DNA in the sample? 20 So was don't disagree on that, correct; there was foreign DNA in the sample? 21 there was foreign DNA in the sample? 22 So was don't disagree on that, correct; there was foreign DNA in the sample? 23 of time and did not see that in the protocol. 24 Q. Was it in one of those guidance documents? 3 A. I don't know that guidance documents? 4 existed at har point in time. That might be a newer thing. 5 Q. So was this considered a best practice at the time? 5 A. I don't know that I could say it was best practice. I just could say that it's my understanding that it was possible and it was analyst discretion. 13 or more from? 14 A. I don't. 15 Q. What does it mean to have discretion to decide whether or not to report these alleles below threshold? 16 decide whether or not they would report below threshold alleles in their written report. 17 Q. But as far as that word discretion goes, does that mean that they have a choice to report them? 18 A. It was my understanding	19	A. Yes.	19	if this in fact did happen and this was allowed, and
22 Q. Have I missed any part of the basic 23 process? 4 A. I don't think so. 25 Q. So you understand in Mr. McGuffin's case STUMPTOWN STENO 503.888.1416 30 3 A. Correct. 4 Q. And we know now that there was foreign DNA 5 on both of those shoes but that foreign DNA wasn't in 6 the report issued in 2000. 7 A. I can't I honestly can't remember if it 8 was in both shoes or just one. I know one had 9 alleles below threshold that did not end up in the 10 report. 11 Q. Okay. If you flip to Exhibit 7 in that 12 binder in front of you, that's the August 2000 13 report. 14 A. Yes. Q. And if you flip to Exhibit 8, that's the Journary 2002 report, comparing the samples from 2000 17 to one other standard, correct? 18 A. Yes. Q. And if you flip to Exhibit 8, that's the Journary 2002 report, comparing the samples from 2000 17 to one other standard, correct? 28 A. Correct, the DNA was below the laboratory's threshold and it was not reported. 29 C. So we don't disagree on that, correct, that 20 G. So we don't disagree on that, correct, that 21 there was foreign DNA in the sample? 25 STUMPTOWN STENO 26 A. I don't know that guidance documents 27 was it in one of those guidance documents? 3 A. I don't know that guidance documents? 3 A. I don't know that guidance documents? 4 C. So was this considered a best practice at the thing. 4 A. I don't know that I could say it was best practice. I just could say that it's my understanding that it was possible and it was analyst discretion. 10 C. But you don't know where that discretion comes from? 4 A. I don't. 5 Q. What does it mean to have discretion to decide whether or not to report those alleles below threshold? 16 decide whether or not to report those alleles below therefold and it was not reported. 17 the time? 18 A. It was my understanding that the analyst could use their training and expertise to determine whether or not they would report below threshold and it was analyst. 19 could use their training and expertise to determine whether or not they would report below threshold or	20	Q. Is that the reporting phase?	20	she confirmed that. Where that rule or that policy
23 process? 24 A. I don't think so. 25 Q. So you understand in Mr. McGuffin's case STUMPTOWN STENO 503.888.1416 30 1 back before the criminal trial, the victim, Leah 2 Freeman's shoes were tested for DNA in 2000, right? 3 A. Correct. 4 Q. And we know now that there was foreign DNA 5 on both of those shoes but that foreign DNA wasn't in 6 the report issued in 2000. 7 A. I can't I honestly can't remember if it 8 was in both shoes or just one. I know one had 9 alleles below threshold that did not end up in the 10 report. 11 Q. Okay. If you flip to Exhibit 7 in that 12 binder in front of you, that's the August 2000 13 creport. 14 A. Yes. 15 Q. And if you flip to Exhibit 8, that's the 16 January 2002 report, comparing the samples from 2000 16 foreign DNA on at least one of the samples that was 17 not listed in the August 2000 report? 28 A. Correct, the DNA was below the laboratory's there was foreign DNA in the sample? 29 TSTUMPTOWN STENO 503.888.1416 20 A. I don't believe it was in the written protocol. I reviewed the protocol from that period STUMPTOWN STENO 503.888.1416 21 of time and did not see that in the protocol. 2 Q. Was it in one of those guidance documents? 3 A. I don't know that guidance documents? 4 existed at that point in time. That might be a newer thing. 5 the report issued in 2000. 5 So was this considered a best practice at the protocol. 10 understanding that it's my understanding that it's my understanding that it's my understanding that the analyst could use their training and expertise to determine over these alleles below threshold? 1 A. I ton't know that guidance documents? 3 A. I don't know that guidance documents? 4 cive at that point in time. That might be a newer thing. 5 the protocol. 1 Q. Was it in one of those guidance documents? 4 existed at that point in time. That might be a newer thing. 5 Q. Was this considered a best practice at the protocol. 10 Q. Was the protocol was protocol that it's my understanding that the analyst could use their training and expertise to determine or	21	A. Yes.	21	came from I don't know.
24 A. I don't think so. Q. So you understand in Mr. McGuffin's case STUMPTOWN STENO 503.888.1416 30 1 back before the criminal trial, the victim, Leah 2 freeman's shoes were tested for DNA in 2000, right? 3 A. Correct. 4 Q. And we know now that there was foreign DNA both of those shoes but that foreign DNA wasn't in the report issued in 2000. 7 A. I can't I honestly can't remember if it was in both shoes or just one. I know one had alleles below threshold that did not end up in the report. 10 creport. 11 Q. Okay. If you flip to Exhibit 7 in that binder in front of you, that's the August 2000 13 report. 14 A. Yes. 15 Q. And if you flip to Exhibit 8, that's the January 2002 report, comparing the samples from 2000 17 to one other standard, correct? 18 A. Yes. 19 Q. So lit's your understanding that there was foreign DNA on at least one of the samples that was not reported. 20 foreign DNA on at least one of the samples that was there was foreign DNA in the sample? 21 there was foreign DNA in the sample? 22 Su we don't disagree on that, correct, that there was foreign DNA in the sample? 25 threshold and it was not reported. 26 Q. So we don't disagree on that, correct, that there was foreign DNA in the sample? 27 STUMPTOWN STENO 28 A. I don't believe it was in the written protocol. Treviewed the protocol from that period STUMPTOWN STENO 503.888.1416 26 Q. Was it in one of those that in the protocol. 27 Q. Was it in one of those dud not see that in the protocol. 28 Q. So was this considered a best practice at that point in time. That might be a newer thing. 29 practice. Just could say that it's my understanding that it was possible and it was analyst discretion. 29 practice. Just could say that it's my understanding that it was possible and it was analyst discretion. 20 G. But you don't know where that discretion to decide whether or not to report those alleles below threshold at it was not reported. 20 Q. So we don't disagree on that, correct, that the protocol from that protocol. 21 Q. But as far as that word di	22	Q. Have I missed any part of the basic	22	Q. So you don't know if it was in a written
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1 Q. Are there certain factors that she might, 2 the analyst might consider when deciding whether to 3 report those alleles or not report them?

A. I don't know. 4

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Q. Who would know that?

A. Cecilia would be the best person to ask, as 6 7 she was the technical leader at the time.

Q. If the analyst wants to exercise her discretion to report the alleles, does she have to get authorization from someone?

A. The technical leader would -- Sorry, not the technical leader. The technical reviewer would have to agree.

Q. If the analyst wanted to choose not to report the alleles below threshold would she also have to get authorization from someone?

A. The technical reviewer has to agree with the interpretation that was performed within the case, so if they chose to report it or they chose not to report it, the technical reviewer would have to agree with that.

Q. You said two different words there, you said interpret and you said report. Is there a difference between the interpretation and the reporting?

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1 A. In the interpretation I believe that they 2 would -- they would still document that the alleles 3 existed, and I don't believe that there was any 4 discretion in that regard. It was the reporting in 5 which there was discretion.

So it's my understanding that those alleles would be in the case file, documented, and that would be part of the interpretation, but the discretion came in regard to the reporting.

Q. And is that piece on the reporting that you don't know that there was a written policy that allowed that discretion?

A. Correct.

Q. Do analysts now have discretion to choose whether or not to report alleles below threshold?

A. No.

17 Q. So at some point did there become a written 18 policy that says you do not have discretion to report 19 those?

20 A. Yes. When that was, I'm not sure.

Q. But it's in a written policy somewhere?

23 **Q.** Is it in the current written policy?

A. Yes.

25 **Q.** Do you know where in the current written

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1 policy?

2 A. It would be in the data interpretation area 3 of our policy and/or report writing.

Q. Would it say specifically, you do not have discretion?

6 A. It wouldn't say that. It would be more 7 based on the number of alleles that you're seeing and 8 the number of loci that you're seeing alleles at and 9 the peak heights, so it would be more data driven 10 versus discretion or no discretion.

Q. Those same instructions that are in the current policy did not exist in the old policy?

A. No.

Q. Under the old protocols in 2000, if the analyst chooses not to report peaks under threshold, does she have to document that she made that choice?

A. I don't believe that it was required to document but you would see that within the case file, you would see the alleles below threshold in the allele table and then you would not see that reported in the report, but I don't think I've ever seen it specifically spelled out in a case file, I chose not to report these.

Q. So how does someone who doesn't understand an allele chart or an electropherogram, how does that

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1 person know that there was peaks below threshold that 2 are not being reported? A. They would see them in the allele table and 3

4 in the electropherogram.

5 Q. And that's the only place that they would 6 see them?

A. Yes.

8 Q. Can you turn to Exhibit 11 in that binder.

10 Q. And I'm looking specifically at cutting 1.3 11 which is about four rows down.

12 A. Okay.

13 **Q.** My understanding is that the analyst in 14 2000 reported the results for cutting 1.3. And if 15 you need to, you can flip back to -- I think that is 16 Exhibit No. 7 that's the final report. On the second 17 page of Exhibit 7 the analyst lists the cutting is 18 just Exhibit 1, but my understanding was she's 19 referring to cutting 1.3. Is that correct? 20

A. Yes. It's my understanding that at that point in time they didn't necessarily report every single sample if it was from the same item of 23 evidence.

24 And it looks like three different cuttings were taken from that shoe, and they reported the STUMPTOWN STENO 503.888.1416

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43 1 **Q.** Yes, the electropherograms of cutting 1.3. 1 do not match Mr. McGuffin? 2 A. Okav. 2 A. That is correct. Q. I don't see that she has noted that 12 as 3 3 Q. And we agree that they don't match the 4 victim, Ms. Freeman? 4 being stutter. 5 A. Correct. 5 A. Correct. Q. Does that indicate that she has not 6 6 Q. Can you turn to Exhibit 9 in that binder. 7 determined that that 12 is stutter? 7 This is just a couple of pages from the 2000 8 A. Yes. If she had considered it stutter she protocol, and if you turn to the third page of that 9 would have crossed it off and not included it in her 9 exhibit --10 allele table. 10 A. Okay. 11 11 Q. -- this is page 43 of the 2000 protocols. Q. So if we go back to that allele table at 12 Exhibit No. 11 and we look at cutting 1.3, is there 12 And I see it says at the top there, "Note: Peaks 13 between 50 and 150 RFU will be considered for 13 any other reason why that allele 12 at the D5 locus 14 14 purposes of exclusion." being above threshold was not reported? 15 A. More than likely it was because it was only 15 A. Yes. 16 one allele that was above threshold. 16 Q. What does that mean? 17 Q. Is that another written protocol or 17 A. That means if you have data between 50 and 18 unwritten practice? 18 150 and you have a standard to compare to that 19 A. I don't think it was written, it was 19 sample, you will look at that data between 50 and 150 20 20 to exclude somebody. probably a practice. 21 Q. To not report if there's only one peak 21 Q. So here we know that there was data between 22 22 above threshold --50 and 150 and we know that Mr. McGuffin was excluded A. Correct. 23 23 from that data. Why was that not reported pursuant 24 Q. -- in the foreign DNA? 24 to this policy? If you're looking for the report --25 A. Correct. 25 A. Is that 7? STUMPTOWN STENO STUMPTOWN STENO 503.888.1416 503.888.1416 44 42 1 1 Q. The Y peak at the amelogenin locus --**Q.** Exhibit 7, correct. 2 A. Yes. 2 A. I don't think in the first report, the 3 Q. -- that tells us that there's male DNA in 3 August 27th, 2000, I don't believe that there was a the sample, correct? 4 4 standard other than Corliss Courtwright and Dennis 5 A. Correct. 5 Freeman. I don't know why that comparison was not 6 6 made. Q. So for any sample that has a Y peak, we 7 7 know that there's male in the sample? I'm assuming both of those individuals were male -- Oh, no. One of them -- Excuse me. It looks 8 A. At least some male, yes. 8 9 9 **Q.** If we know that the victim is female, then like those were Leah Freeman's parents, and those 10 10 we know that that is foreign DNA in the sample, samples were used to confirm that the toothbrush was 11 correct? 11 an appropriate standard for the victim, but I'm not 12 A. Correct. 12 sure why in this report the -- that Dennis Freeman 13 Q. So here we've got, going back to cutting 13 wasn't compared to that to exclude. 14 1.3, we have Y in the sample. So we know that Q. Do you know why Mr. McGuffin wasn't 15 there's some male in that sample? 15 compared and noted to exclude? 16 A. Correct. 16 A. Did we -- I'm not sure that we had his 17 Q. Is there a reason why an analyst wouldn't 17 standard at that point. I don't see his standard 18 report that, knowing that the victim was female and 18 listed but I might be missing it in my cursory 19 so that was always going to be foreign male DNA in 19 review. that sample? 20 20 **Q.** If you look on the electropherograms which 21 A. Just going back to the -- they had 21 are in Exhibit 10 --22 discretion, so I don't know why the discretion was 22 A. Yes. 23 used on this particular sample. 23 Q. -- second to the last page, Exhibit No. 13, 24 Q. Do we agree that the foreign DNA profile 24 it's an electropherogram, Exhibit 13? 25 seen in 2000 and listed on Ms. Krings' allele chart A. Yes. STUMPTOWN STENO STUMPTOWN STENO 503.888.1416 503.888.1416

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1	laboratory would have had protocols or guidelines in	1	State of Oregon)
2	regard to reporting.	2) ss. County of Clackamas)
3	Q. Okay. And the threshold would have been	_	County of Clackamas)
4	around 150 at that time?	3	
5	A. Or lower.	4	I, Lisa J. Pace, Court Reporter and Notary
6	Q. Or lower?	5 6	Public, do hereby certify that STEPHENIE WINTER SERMENO personally appeared before me at the time and
7	A. Or higher. It depends on the laboratory.	7	place mentioned in the caption herein; that the
8	It's That's common even now.	8	witness was by me first duly sworn on oath and
9	Q. How do laboratories justify that when they	9	examined upon oral interrogatories propounded by
10	have theoretically an accreditation out there, how do	10 11	counsel; that said examination, together with the testimony of said witness, was taken down by me in
11	they justify having different numbers? This is a	12	stenotype and thereafter reduced to typewriting; and
12	hard science.	13	that the foregoing transcript, Pages 1 to 70, both
13	A. It's actually an applied science. And it	14 15	inclusive, contains a full, true and accurate record of all such testimony adduced and oral proceedings
14	is based on experiments that were done in an	16	and of the whole thereof.
15 16	individual laboratory, we don't all use the same instruments, we don't use all the same amplification	17	Witness my hand at Lake Oswego, Oregon, this
17	kits. Our processes are not identical, therefore,	18	11th day of July 2019.
18	you have you can't have an expectation that the	19 20	
19	thresholds will be identical.		
20	Q. All right. And do you recall when the	21	
21	threshold changed in this agency from 150 to below	22	Lisa J. Pace
22	that?	~~	Court Reporter
23	A. I don't.	23	Notary Public for Oregon
24	MR. REIM: Very good. I don't have any	24	My Commission expires 7/17/20
25	other questions for you, ma'am. Thank you.	24 25	
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1	MS. PURACAL: We're done.		
3	Off the record. [Deposition adjourned at 10:34]		
4	[Deposition adjourned at 10.04]		
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